
Costs Decision

Site visit made on 28 December 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 January 2018

Costs application in relation to Appeal Ref: APP/N4720/W/17/3180701 54 Longroyd Grove, Beeston, Leeds LS11 5HQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Michael Chamberlain for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for is the change of use from dwellinghouse (C3 Use) to 5 Bedroom HMO (C4 Use).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The basis of the appellant's claim for costs is that the Council failed to correctly apply the policies contained within the development plan in respect of the proposal and failed to attach appropriate weight to matters that can be controlled through other legislation in its decision to refuse planning permission.
5. The Council's first reason for the refusal of planning permission relates to the loss of a property that would be suitable for use as a family dwelling in an area of Leeds which is imbalanced due to a high concentration of Houses in Multiple Occupation (HMOs) further contributing to the existing housing imbalance and would therefore conflict with Policy H6 of the Leeds Local Development Framework Core Strategy 2014 (Core Strategy).

6. The Council's Officer Delegation Report identifies that the immediate area is not heavily affected by HMOs and therefore the proposals would be compliant with criteria (iii) of Policy H6 (Part A) of the Core Strategy and that there are no other HMOs on Longroyd Grove which consists of 77 dwellings.
7. In identifying the extent to which the area can be described as having a high concentration HMOs the Council has sought to rely on the evidence provided by Councillors during the consultations on the planning application. This indicated that 'there are too many flats and bedsits in our ward. We need stable communities, especially family homes.' In addition, it is also suggested that the implementation of an Article 4 Direction that covers within the wider area is recognition that there is a high concentration of HMOs.
8. I agree with the appellant that the Article 4 Direction does not place an embargo upon new proposals for HMOs but its purpose is to introduce planning controls to ensure that high concentrations do not form in one area. Furthermore, Policy H6 (A) and the supporting text expresses a need to ensure that a sufficient supply of HMOs is maintained in Leeds within the areas covered by the Article 4 Direction but also recognises the need to avoid detrimental impacts through high concentrations of HMOs, which would undermine the balance and health of communities.
9. Whilst I accept that it is difficult to precisely define the number of HMO's in the area, no evidence has been provided in this case to indicate what percentage of HMOs relative to other housing would constitute an imbalance, over what geographical area such calculation should be made or any other form of calculation that would assist in defining the extent to which houses in the local area are occupied as HMO's and therefore, empirically, at what point an alleged imbalance in the community occurs. As such, the Council's assertion that the site is within an area of high concentration of HMO's and would lead to housing imbalance is a generalised view which is unsupported by any objective analysis.
10. My concerns are further compounded by the fact that there are no other HMO's on the street and the conflicting comments in the Delegation Report which identify that the immediate area is not heavily affected by HMOs and therefore the proposals would be compliant with criteria (iii) of Policy H6 (Part A) of the Core Strategy.
11. In this context, little evidence has been provided by the Council to support the first reason for refusal and the extent to which the proposal would adversely impact on or undermine the balance and health of the local community. Taking these factors into account, given the paucity of evidence provided in this case I can see no reasonable justification for the Council's first reason for refusal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated with regard to the first reason for refusal and that a partial award of costs is justified.
13. The second reason for the refusal of planning permission relates to the impact of the proposal on the residential amenity of the area through increased comings and goings of the future occupiers of the HMO which would lead to increased noise and disturbance that would adversely affect the living conditions of the occupiers of adjacent properties.

14. It is clear from the evidence provided by both main parties that the consideration of such matters is subjective and dependant on several factors including, but not exhaustive, the residential character of the area, the number of occupants in the HMO, the cumulative effect of HMOs and the location of the property. As a consequence there are understandably a difference in the views of both parties and little reference to any technical evidence.
15. In my view, given the relatively quiet residential character of Longroyd Grove which currently does not contain any HMOs, the Council were quite entitled to consider the effect of the proposed change of use on the living conditions of the occupants of nearby buildings in the context of Policy H6 (A)(iv).
16. In supporting its concerns, the Council referred to the Government Report 'Evidence Gathering – Housing in Multiple Occupation and possible planning response – Final Report' which indicates that concentrations of HMOs can result in anti-social behaviour, noise and nuisance resulting from an increase number, or different pattern, of comings and goings compared to a family living in the same property.
17. HMOs do have the potential to generate noise and disturbance to some extent. I found that the proposal would constitute an isolated HMO on the street and that there are no parking problems in this sustainable location and that parking can be accommodated on the street. These were contributory factors in arriving at my view that the proposal would not cause demonstrable harm to the living conditions of the occupants of nearby properties. However, this does not imply that the Council acted unreasonably in arriving at its conclusion.
18. In recognising that the consideration of such matters is subjective, the views of the Council were adequately substantiated in the Decision Notice and were relevant to policies in the development plan. Taking all of these matters into account, I find that the second reason for the refusal of the planning application, as set out in the Decision Notice, was complete, precise, specific and relevant to the application. I have found that the Council had reasonable concerns about the impact of the proposed development which led to the decision to refuse the application. Just because I have found differently from the Council this does not mean to say that the Council's concerns had no basis. Accordingly, with regard to the second reason for refusal, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal on the basis of this reason for refusal could not have been avoided.
19. The third reason for refusal suggests that the combination of the small room size, lack of communal living area and the juxtaposition of rooms would give rise to an over intensive development which would offer a poor level of amenity to prospective residents. The appellant suggests that the management of HMO property standards is through licensing arrangements controlled by the Council which are separate and beyond the control of planning legislation. In addition, it is suggested that the proposal would comply with the Council's Advisory Standards for HMOs (2017) (the Standards). However these standards do not provide any minimum size for bedrooms.
20. I agree with the Council that the guidance produced by the Licensing Team does not constitute a planning policy document , does not form part of the Local Development Framework and has not been subject to any public consultation or examination.

21. Policy P10 of the Core Strategy and Saved Policy GP5 of the Leeds Unitary Development Plan, Review 2006 (UDP) require, amongst other things, that proposals should contribute positively to quality of life and provide a good level of amenity for future occupiers, including providing living accommodation which is of an appropriate size.
22. I have taken into account the above policies, the lack of any prescribed bedroom sizes in the Standards, or in any other adopted Council document, and the advice provided in paragraph 17 of the National Planning Policy Framework which indicates that planning should always seek a good standard of amenity for all future occupants of buildings. These factors lead me to conclude that the Council acted reasonably in considering the effect of the proposal on the living conditions of the future occupants of the HMO.
23. The Council has given clear reasons for reaching its judgement, both in the appeal statement and the officer's report related to the relevant policy in the Core Strategy and the saved policy in the UDP. Overall, I consider that the Council appears to have undertaken a reasoned judgement on living conditions based on the policies contained within the Development Plan. In the absence of any other prescribed standards relating to bedroom sizes, there is no substantive evidence before me to demonstrate that the Council acted unreasonably in its consideration of this matter. Accordingly, in relation to the third reason for refusal, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal on this basis could not have been avoided.

Conclusion

24. The Council's reason for refusing planning permission, as set out in its Decision Notice, consists of three distinct elements. I have found that the Council behaved unreasonably in reaching its decision on the first reason for the refusal of planning permission, but not the second and third. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the first of the Council's reasons for refusal is justified.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Leeds City Council shall pay Mr Michael Chamberlain the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first of the Council's reasons for refusal, which concerned alleged conflict with Policy H6 of the Core Strategy.
26. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR